

IT IS ORDERED

Date Entered on Docket: May 10, 2018



The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

LAURA FADRAGA

Case No. 7-18-10143-TA

Debtor.

**DEFAULT ORDER GRANTING LAKEVIEW LOAN SERVICING, LLC RELIEF FROM
AUTOMATIC STAY AND ABANDONMENT OF PROPERTY TO LAKEVIEW LOAN
SERVICING, LLC LOCATED AT 2617 ALVARADO DR. NE ALBUQUERQUE, NEW
MEXICO 87110**

This matter came before the Court on the Motion for Relief from Automatic Stay for the Abandonment of Property to Lakeview Loan Servicing, LLC, filed on March 19 2018, (DOC 15) (the “Motion”) by Lakeview Loan Servicing, LLC (“Lakeview”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On March 19, 2018, Lakeview served the Motion and a notice of the Motion (the “Notice”) on Edward Alexander Mazel, Trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor Laura Fadrage, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014. On March 26, 2018, Lakeview served an amended notice of the Motion.

(b) The Motion relates to the property located at 2617 Alvarado Dr. NE Albuquerque, New Mexico 87110, more fully described as:

Lot numbered Six (6) in Block numbered Twelve (12) of MIRAMONTES PARK, UNIT NO. 1, an Addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the J.E. Brown's Subdivision of East half of North 420' of Block 12 of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on August 20, 1956, in Plat Book B3, folio 38.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the "Property"). If there is a conflict between the legal description and the street address, the legal description shall control.

(c) The Notice provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on April 20, 2018;

(f) Plaintiff asserts the following: On April 11, 2018 a voicemail was received from the Debtor by Plaintiff's counsel requesting a return call regarding loan modification. The Debtor was called back, with counsel stating that her call was being returned. The Debtor hung up after repeating the word "No". The Debtor was called a second time stating that her call was being returned at her. The Debtor kept repeating the word "No". Debtor was advised that she would not be called again.

(g) As of May 5, 2018, however, neither the Debtor nor the Trustee, nor any other party in interest, filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein; and

(h) By submitting this Order to the Court for entry, the undersigned counsel for Lakeview certifies under penalty of perjury that, on the date this Order was presented Rose L. Brand & Associates, P.C. searched the data banks of the Department of Defense Manpower Data Center

(“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Lakeview and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce its rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to it under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Lakeview need not name the Trustee as a defendant in any state court action it may pursue to foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, in the event that a discharge order is entered. The Debtor can be named as a defendant in litigation to obtain judgment or to repossess the Property in accordance with applicable non-bankruptcy law, pursuant to any discharge order entered.

4. This Order does not waive Lakeview’s claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Lakeview may file an amended proof of claim in this bankruptcy case within thirty (30) days after a foreclosure sale of the Property, should it claim that Debtor owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. Lakeview is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with the Debtor and to enter into a loan modification with the Debtor.

XXX END OF ORDER XXX

RESPECTFULLY SUBMITTED:

ROSE L. BRAND & ASSOCIATES, P.C.

By: /s/Andrew P. Yarrington

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